IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 16TH JANUARY 2007 / 26TH PAUSHA 1928

OP.No. 17296 of 1998(H)

PETITIONER:

S.V. SEETHA DEVI, CONFIDENTIAL ASSISTANT,
COLLECTORATE, THIRUVANANTHAPURAM.

BY ADV. SRI.S.EASWARAN

RESPONDENTS:

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1. KERALA PUBLIC SERVICE COMMISSSION, THIRUVANANTHAPURAM,
REP. BY ITS SECRETARY.

2. THE DISTRICT COLLECTOR, TIRUVANANTHAPURAM.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/01/2007, THE COURT ON THE SAME DAY, DELIVERED THE FOLLOWING:

PETITIONER'S EXIBITS:

EXT.P1 TRUE COPY OF JUDGMENT IN O.P.NO.3984/1992 DT. 8-7-1998.

EXT.P2 ORDER DT. 2-9-1998.

EXT.P3 PROCEEDINGS DT. 19-3-1992.

EXT.P4 1st PAGE OF SSLC BOOK OF PETITIONER.

EXT.P5 1st PAGE OF SSLC BOOK OF CHITRA S.V.

EXT.P5(a) DO. OF SEENA S.V.

EXT.P5(b) 3rd PAGE OF SSLC BOOK OF KARTHIKAKUTTY A.

EXT.P6 CASTE CERTIFICATE DT. 10-8-1989.

EXT.P7 COMMUNITY CERTIFICATE DT. 29-2-1992.

EXT.P8 CERTIFICATE DT. 30-1-1992.

EXT.P9 SHOW CAUSE NOTICE DT. 22-2-1992.

EXT.P10 EXPLANATION DT. 12-3-1992.

EXT.P11 PETITION DT. 29-10-1991.

EXT.P12 REPORT OF ENQUIRY.

EXT.P13 LETTER DT. 1-2-1992.

EXT.P14 EXPLANATION DT. 3-6-1998.

EXT.P15 STATEMENT DT. 29-1-1992.

EXT.P16 STATEMENT DT.31-1-1992.

EXT.P17 STATEMENT DT. 31-1-1992

[]TRUE COPY]

P.S TO JUDGE.

S. Siri Jagan, J.

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O.P. No. 17296 of 1998

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Dated this, the 16th January, 2007.

J U D G M E N T

The Kerala Public Service Commission conducted a special recruitment from among scheduled casts and scheduled tribes for selection of candidates for appointment to the post of Confidential Assistant Grade II in various departments under the Government of Kerala. In the rank list published, the petitioner was no. 1 and accordingly by advice dated 30-3-1991, the petitioner was advised to the said post. On 22-2-1992, the petitioner was issued a show cause notice calling upon her to show cause why her advice should not be cancelled under Rule 3(c) of the General Rules of Kerala State and Subordinate Services Rules. The petitioner challenged the same in O.P.No. 3984/1992 and by Ext. P1 judgment in that original petition, this Court directed the Public Service Commission to consider the representation to be filed by the petitioner. Accordingly, petitioner's representation was considered and Ext. P2 order dated 2-9-1998 was passed confirming the order earlier passed cancelling the advice of the petitioner for the post of Confidential Assistant Grade II. Ext. P3 is the earlier proceedings dated 19-3-1992, which has been confirmed by Ext. P2, which was passed pursuant to Ext. P9 show cause notice. The petitioner is challenging Exts. P2, P3 and P9 in this original petition.

2. Petitioner challenges the impugned orders on several grounds. First is regarding the jurisdiction of the Public Service Commission to go into the question as to the caste status of the petitioner when the competent authority, namely, the Tahsildar concerned has issued caste certificate showing the petitioner's caste as Hindu Vannan which is admittedly a scheduled caste. Petitioner's contention is that such powers rest exclusively with either the Tahsildar or after the decision of the Supreme Court in Kumari

Madhuri Patil v. Additional Commissioner, Tribal Development and others, 1994 (6) SCC 241, with the KIRTADS, which has been accepted as the authority competent to go into the correctness or otherwise of the caste status of persons. The second contention is that when the petitioner has produced documents issued by the competent authority to prove her caste status before the Public Service Commission, the genuineness of which is not disputed, the Public Service Commission had no power to invoke Rule 3(c) of KS and SSR. The third contention is that Exts. P2 and P3 orders have been passed by the Public Service Commission based on a report of the vigilance officer pursuant to an enquiry conducted behind the back of the petitioner. The petitioner was never made a party to such enquiry and she never had any opportunity to defend herself in that enquiry. Therefore, that enquiry itself has been in violation of the principles of natural justice and therefore Exts. P2 and P3 orders which have been passed based on such invalid enquiry should also to be held to be in violation of the principles of natural justice and hence unsustainable.

3. On the other hand, learned counsel for the Public Service Commission draws my attention to Rule 22(iii) of the Kerala Public Service Commission Rules of Procedure which gives the Commission power to take action for disqualifying candidates who are found guilty of making of any false statement in the application form or its annexure or any document produced in connection with a selection or suppression of any material fact relevant to the selection from the Commission. On the basis of this Rule, counsel for the Commission submits that since the petitioner has given false information regarding her caste status in the application form by producing documents which have been obtained suppressing her real caste, the Commission

certainly has the power to invoke Rule 3(c) of the KS and SSR and therefore the contentions of the petitioner are without any merit.

4. I have considered the rival contentions in detail.

5. The petitioner has produced a true copy of the 3rd page of her SSLC Certificate as Ext. P4. She has also produced Ext. P6 certificate issued by the Tahsildar, Thiruvananthapuram dated 10-8-1989. Both these documents show the caste of the petitioner as Hindu Vannan. It is also not disputed before me that these documents are the ones which have been produced before the Public Service Commission in support of the petitioner's claim that she is a scheduled caste candidate. It is also not disputed before me that the authority to issue certificates to persons regarding their caste status is the Tahsildar within whose jurisdiction those persons reside. No arguments have been addressed before me on the basis that Ext. P6 certificate issued by the concerned Tahsildar is not genuine. In the above circumstances, I am not satisfied that the Public Service Commission has any authority to conduct an enquiry into the caste status of the petitioner through its vigilance officer. Law provides, especially after the decision of the Madhuri Patil's case as also after the promulgation of the Kerala Scheduled Castes and Scheduled Tribes Regulation of Issue of Community Certificate Act, 1996, for a machinery for verifying caste certificates issued by the appropriate authorities and the caste status of persons. Therefore, it was totally incompetent for the Public Service Commission to conduct an enquiry into the caste status of the petitioner in so far as the Public Service Commission had no contention that the caste certificate produced by her is bogus or fabricated.

6. Further, the enquiry conducted by the vigilance officer of the Public Service Commission regarding the caste status of the petitioner

was not after issue of notice to the petitioner. At no point of time, the petitioner was given an opportunity to produce evidence or to satisfy the vigilance officer that she is in fact a member of a scheduled caste community. Public Service Commission has no case that a copy of the report of enquiry of the vigilance officer has been furnished to the petitioner. In the above circumstances, Exts. P2 and P3 orders passed on an enquiry report, which has been conducted without notice or opportunity to the petitioner, that too, without giving a copy of the same to the petitioner, is clearly unsustainable.

For all the above reasons, I am satisfied that Exts. P2, P3 and P9 orders have been passed without jurisdiction and are unsustainable. Accordingly, the same are quashed. The petitioner's advice to the post of Confidential Assistant would stand restored and since there was a stay in the original petition, the petitioner would continue as Confidential Assistant pursuant to the appointment in accordance with such advice. However, this would be without prejudice to the appropriate authorities to conduct appropriate investigation into the caste status of the petitioner, if they so find it necessary. The original petition is allowed as above.

Sd/- S. Siri Jagan, Judge.

Tds/